

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

STATE NATIONAL INSURANCE
COMPANY, INC.,

Plaintiff,

v.

THE BADELLE GROUP, INC., et al.,

Defendants.

Case No. 23-cv-00387-MMC

**ORDER RE: MOTION FOR SERVICE
BY PUBLICATION; DIRECTIONS TO
PLAINTIFF**

Before the Court is plaintiff State National Insurance Company, Inc.'s ("State National") "Motion for Order Permitting Service by Publication of Summons and Extending Deadlines," filed March 23, 2023, wherein State National seeks an order "(1) allowing service by publication of defendants Brett Badelle and the Badelle Group, Inc. (collectively, 'the Badelle Defendants') and (2) extending the time permitted to complete service and comply with other Court-imposed litigation deadlines." (See Mot. at 1 (Dkt. No. 10).)

By order filed March 29, 2023, the Court afforded State National leave to file supplemental briefing as to the need for service by publication, in light of the fact that, at the time the motion was filed, State National had not endeavored to reach out to the Badelle Defendants' current counsel of record in the underlying personal injury action that gives rise to the instant lawsuit, whereby plaintiff seeks a declaration that it owes the Badelle Defendants no duty to defend or indemnify them in said action. (See Dkt. No. 13 ("March 29 Order").) Thereafter, on April 11, 2023, counsel for State National filed a supplemental declaration in support of the instant motion, wherein he describes his unsuccessful attempts to effectuate service on the Badelle Defendants' counsel of record in the underlying state action and renews State National's request to serve the Badelle

Defendants by publication. (See Raphael Supp. Decl. (Dkt. No. 15).) The Court, having read and considered the papers filed support of the motion, including the supplemental filing, rules as follows.

LEGAL STANDARD

Under Rule 4(e)(1) of the Federal Rules of Civil Procedure, an individual defendant may be served with process in accordance with the law “in the state where the district court is located or where service is made.” California law, in turn, provides that “[a] summons may be served by publication if upon affidavit it appears to the satisfaction of the court ... [1] that the party to be served cannot with reasonable diligence be served in another manner specified in this article and [2] that ... [a] cause of action exists against the party upon whom service is to be made.” See Cal. Code Civ. P. § 415.50(a).

DISCUSSION

A. Reasonable Diligence

To determine whether a plaintiff has exercised “reasonable diligence,” a court must examine whether the plaintiff “took those steps which a reasonable person who truly desired to give notice would have taken under the circumstances.” See Donei, Inc. v. Badalian, 87 Cal. App. 3d 327, 333 (1978). Reasonable diligence “denotes a thorough, systematic investigation and inquiry conducted in good faith by the party or his agent or attorney.” See Kott v. Superior Court, 45 Cal. App. 4th 1126, 1137 (1996). “Before allowing a plaintiff to resort to service by publication, ... courts necessarily require [such party] to show exhaustive attempts to locate the defendant, for it is generally recognized that service by publication rarely results in actual notice.” Watts v. Crawford, 10 Cal. 4th 743, 749 n.5 (1995) (internal quotation and citation omitted).

Here, in addition to the above-referenced declaration, State National has submitted multiple declarations, from its counsel and licensed investigator, which declarations, along with supporting exhibits, describe in detail its repeated attempts to serve process on the Badelle Defendants at multiple locations and at a wide variety of times, all without success. (See Dkt. No. 10 at 6 (Decl. of Roger Raphael); Dkt. No. 10 at

8 (Decl. of Summer Dos Santos), Exs. A, B; Dkt. No. 15 (Supp. Decl. of Roger Raphael).)

The Court finds the efforts to effectuate service on the Badelle Defendants, as described by plaintiff's counsel, qualify as "exhaustive[.]" see Watts, 10 Cal. 4th at 479 n.5., and, accordingly, finds State National has exercised "reasonable diligence" for purposes of the instant motion.

B. Affidavit Supporting Cause of Action

"An application for an order of publication must be accompanied by an affidavit stating facts from which the trial court can draw the conclusion that the plaintiff has a cause of action against the defendant." Rios v. Singh, 65 Cal. App. 5th 871, 884 (2021). Such submission "is a jurisdictional prerequisite to the issuance of an order of publication." Id.

Here, as noted, State National submitted, in support of the instant application, declarations from its counsel. Those declarations, however, contain no "independent evidentiary support, in the form of a sworn statement of facts," see Castillo-Antonio v. Azurdia, 2014 WL 4060219, at *2 (N.D. Cal. Aug. 14, 2014) (internal quotation and citation omitted), based on "personal knowledge[.]" see Malachowski v. Doheny, 2021 WL 5991680, at *2 (N.D. Cal. Nov. 30, 2021), demonstrating that the instant action constitutes a viable claim against each of the Badelle Defendants.

Accordingly, State National has not submitted the affidavit or declaration required under California law. See Rios, 65 Cal. App. 5th at 884 (noting declaration, in lieu of affidavit, may be filed).


CONCLUSION

For the reasons stated above, the Court DEFERS ruling on plaintiff's motion, and, again, affords plaintiff an opportunity to supplement its showing, in this instance by filing, no later than April 28, 2023, an affidavit or declaration as required under California law. In particular, such affidavit or declaration must include facts showing the claim against the insured in the underlying action, as set forth in the underlying complaint, and, if appropriate, any other document(s), falls within one or more of the exclusions on which

1 State National is relying, and an explanation as to how the claimed exclusions apply to
2 the facts of the underlying claim.

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4 **IT IS SO ORDERED.**

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6 Dated: April 13, 2023


MAXINE M. CHESNEY
United States District Judge

United States District Court
Northern District of California